

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41685

CF INDUSTRIES, INC.

v.

KOCH PIPELINE COMPANY, L.P.

Decided: June 7, 2000

By petition filed May 25, 2000, Koch Pipeline Company, L.P. (Koch) seeks a partial stay pending judicial review of the Board's decision in this proceeding served May 9, 2000 (May 9 Decision), which found that certain rate increases taken in 1996 by Koch for the pipeline transportation of anhydrous ammonia were unreasonable.¹ The Board ordered Koch to reduce its rates to the pre-increase levels and to pay reparations and interest to complainants — CF Industries, Inc. (CF) and Farmland Industries, Inc. (Farmland) — for transportation to 19 pipeline destinations in the Midwest. Id. at 27-28.²

Koch seeks a partial stay that would permit it to defer payment of the reparations and interest on past shipments ordered by the Board until this litigation is finally resolved. Koch also seeks assurance that it would be able to collect (with interest) the difference between the reduced rates paid on future shipments and any higher rates that may ultimately be found to be reasonable. Koch points out that a similar partial stay was issued in West Texas Utilities Co. v. Burlington N. R.R., No. 41191 (STB served June 25, 1996) (West Texas).

On May 30, 2000, complainants each replied in opposition to the request for partial stay. In their replies, complainants represented that, if Koch were ultimately to prevail in this matter, they would repay any reparations received for past shipments, and would remit (with interest) the difference between the reduced rates established and paid for future shipments and a higher rate that may ultimately found to be reasonable.

¹ Koch filed a petition for judicial review of the Board's decision in Koch Pipeline Co., L.P. v. STB, No. 00-1213 (D.C. Cir. filed May 24, 2000).

² The Board declined to order rate relief for two other destination points where it found the shippers have effective competitive alternatives to the pipeline. Unless stayed, the Board's order is effective June 8, 2000, requiring Koch to provide the ordered remedies by August 7, 2000.

Because Koch will be adequately protected, and, as explained below, has not otherwise established the necessary predicate for relief, a stay is not warranted.

DISCUSSION AND CONCLUSIONS

To obtain a stay, Koch must show: (1) that there is a strong likelihood that it will prevail on the merits; (2) that it will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 974, 978 (D.C. Cir. 1985); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (Virginia Jobbers). We find that Koch has not satisfied these requirements.

Likelihood of Success on the Merits. Koch claims that “serious” and “difficult” legal issues are presented in this case. It asserts that the Board’s determination under 49 U.S.C. 15503(b) that complainants lacked effective competitive alternatives at 19 of the 21 pipeline points at issue was not supported by substantial evidence of record and was based “on a formulaic approach that was inconsistent with methodology used in prior cases.” Petition at 3. The Board’s decision, however, contained a complete qualitative examination of all possible competitive alternatives, thoroughly analyzing all of the evidence that was submitted on each form of competition. May 9 Decision, at 7-20.³ Koch’s petition for stay does not point to specific information or legal precedent that we failed to consider.

Further, Koch’s assertion that we should not have permitted the use of the “revenue adequacy” constraint in testing the reasonableness of its rates under 49 U.S.C. 15501(a) and 15503, Petition at 4, presents nothing more than a cursory rehash of arguments that were thoroughly addressed and rejected. Under the Board’s judicially affirmed Constrained Market Pricing (CMP) standards, complainants may examine rates from alternative perspectives, using (as relevant here) either the “top-down” approach of the revenue adequacy constraint or the “bottom-up” approach of the stand-alone cost (SAC) constraint, and there was no basis to deny complainants their choice to test the reasonableness of Koch’s rates from the revenue-adequacy perspective. May 9 Decision, at 20-21; see also 6-7. Koch does not contest the manner in which the Board applied the revenue adequacy constraint. Thus, Koch has not demonstrated that it is likely to prevail on judicial review.

Irreparable Harm to Koch. Koch argues that it would be irreparably harmed without a partial stay because there is “no mechanism” for it to recover from complainants amounts paid in reparations for past shipments, and for unpaid amounts for future shipments, should a higher rate

³ Indeed, over complainants’ objections, the Board considered Koch’s evidence relating to product and geographic competition. May 9 Decision, at 5-6.

that it could have collected ultimately be determined to be reasonable. Petition at 2. Those concerns have been satisfied, however, by the complainants' express acknowledgment of their intent and obligation, should Koch prevail on judicial review, to repay reparations for past shipments, and for future shipments to remit to defendant with interest (in accordance with 49 CFR part 1141) any higher amounts ultimately found to be reasonable.⁴ CF Reply, at 3-5, Farmland Reply, at 8. Because it can be made whole, Koch has not established irreparable harm sufficient to obtain a stay.⁵

Harm to Complainants. On the other hand, should we grant a partial stay, complainants would be denied the payment of reparations and the use of funds — amounts that CF estimates at more than \$10 million and Farmland almost \$6 million — that we determined Koch should not have collected for the past 4 years.

The Public Interest. The Board's public-interest mandate here is to promote reasonable pipeline rates, and Koch has not shown that its requested partial stay would promote that interest, Virginia Jobbers, 259 F.2d at 925, or otherwise overcome the "strong presumption of regularity support[ing] any order of an administrative agency." Busboom Grain Co. v. ICC, 830 F.2d 74, 75 (7th Cir. 1987), citing Coleman v. PACCAR, Inc., 424 U.S. 1301 (1976). Koch argues that the public interest requires a partial stay because its pipeline is nearing the end of its useful life and immediately requires substantial funds to maintain and upgrade it. Petition at 7. The Board, however, considered this contention and found that Koch already had sufficient funds to cover its immediate requirements without the rate increases. May 9 Decision, at 25-26. Accordingly, Koch has not demonstrated that the public interest requires a partial stay.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial stay is denied.
2. This decision is effective on the date of service.

⁴ Koch also has all legal and regulatory remedies to compel that result, should it be necessary. 49 U.S.C. 15103.

⁵ Here, as in West Texas, Koch has not shown that an escrow is necessary. Further, while we required the complainant utility in West Texas, at 7, to file a statement attesting to its intention to remit any sums that, after judicial review, may ultimately be found owing to the defendant railroad in that case, we will not require such filings here because the representations to this effect in complainants' reply statements have the same effect.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary